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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Christopher Lee Smith,

10 Petitioner,

11 v.

12 Ryan Thornell, et al.,

13 Respondents.

14 No. CV-23-00997-PHX-DWL

ORDER

15 This is a habeas corpus action under 28 U.S.C. § 2254. (Doc. 1.) On December 4,
16 2023, Judge Bachus issued a Report and Recommendation (“R&R”) concluding that the
17 petition should be denied and dismissed with prejudice. (Doc. 11.) The R&R further
18 provided that “[t]he parties shall have fourteen days from the date of service of a copy of
19 this [R&R] within which to file specific written objections with the Court.” (*Id.* at 14.)

20 One day after the R&R was issued, Petitioner filed a motion to “withdraw and
21 dismiss” this action. (Doc. 12.) In response, the Court issued an order clarifying that,
22 “because Respondents have already filed an answer, Petitioner is not entitled to automatic
23 dismissal under Rule 41(a)(1)(i). Accordingly, the Court will take no action on the
24 dismissal request, which arises under Rule 41(a)(2), at this time and will instead wait for
25 Respondents to respond to it. Petitioner is also reminded that the deadline for responding
26 to the R&R remains unchanged and, as noted in the R&R, ‘[f]ailure to timely file objections
27 to the [R&R] may result in the acceptance of the [R&R] by the District Court without
28 further review.’” (Doc. 13, citations omitted.)

1 Here, no such objections have been filed and the deadline for filing objections has
2 expired. Thus, the Court accepts the Magistrate Judge’s recommendation. *See, e.g.*,
3 *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985) (“It does not appear that Congress intended
4 to require district court review of a magistrate’s factual or legal conclusions, under a *de
5 novo* or any other standard, when neither party objects to those findings.”); *Schmidt v.
6 Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (“[N]o review is required of a
7 magistrate judge’s report and recommendation unless objections are filed.”). *See also*
8 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (“[T]he district judge
9 must review the magistrate judge’s findings and recommendations *de novo if objection is
10 made*, but not otherwise.”).

11 This outcome also moots Petitioner’s motion to “withdraw and dismiss.” The Court
12 notes, at any rate, that it would not have granted such a dismissal for the reasons stated in
13 Respondents’ opposition (Doc. 14).

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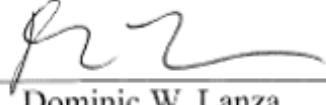
1 Accordingly,

2 **IT IS ORDERED** that the R&R's recommended disposition (Doc. 11) is **accepted**,
3 that the petition (Doc. 1) is **denied and dismissed with prejudice**, and that the Clerk of
4 Court shall enter judgment accordingly.

5 **IT IS FURTHER ORDERED** that Petitioner's motion to "withdraw and dismiss"
6 (Doc. 12) is **denied as moot**.

7 **IT IS FURTHER ORDERED** that a certificate of appealability and leave to
8 proceed *in forma pauperis* on appeal are **denied** because Petitioner has not made a
9 substantial showing of the denial of a constitutional right and because the dismissal of the
10 petition is justified by a plain procedural bar and jurists of reason would not find the
11 procedural ruling debatable.

12 Dated this 21st day of December, 2023.

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15 Dominic W. Lanza
16 United States District Judge
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